

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

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Marchell O'Brien,

Plaintiff,

v.

Advance America d/b/a AARC, LLC,

Defendant.

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: Civil Action No.: 3 : 23 - cv - 226  
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: **COMPLAINT**  
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For this Complaint, the Plaintiff, Marchell O'Brien, by undersigned counsel,  
states as follows:

**JURISDICTION**

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the "TCPA").
2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the Defendant transacts business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

**PARTIES**

3. The Plaintiff, Marchell O'Brien ("Plaintiff"), is an adult individual residing in Liberty, Indiana, and is a "person" as the term is defined by 47 U.S.C. § 153(39).
4. Defendant Advance America d/b/a AARC, LLC ("Advance America"), is a Texas business entity with an address of 13531 Montfort Drive, Suite 121, Dallas, Texas 75240, and is a "person" as the term is defined by 47 U.S.C. § 153(39).

**FACTS**

5. In or around August 2022, Advance America began calling Plaintiff's cellular telephone, number 765-xxx-2605, using an artificial or prerecorded voice.

6. When Plaintiff answered calls from Advance America, she heard a prerecorded message requesting a call back.

7. On or about August 17, 2022, Plaintiff spoke with Advance America and requested that all calls to her cease.

8. In complete disregard of Plaintiff's cease request, Advance America continued to place automated calls to Plaintiff's cellular telephone number.

**COUNT I**  
**VIOLATIONS OF THE TCPA - 47 U.S.C. § 227, et seq.**

9. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

10. At all times mentioned herein, Defendant called Plaintiff on her cellular telephone using a prerecorded or artificial voice.

11. Defendant placed automated calls to Plaintiff's cellular telephone despite knowing that it lacked consent to place such calls. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

12. The telephone number called by Defendant was assigned to a cellular telephone service pursuant to 47 U.S.C. § 227(b)(1).

13. The calls from Defendant to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

14. As a result of each of Defendant's negligent violations of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call placed in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

15. As a result of each of Defendant's knowing and/or willful violations of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 for each and every violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that judgment be entered against Defendant:

- A. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
- B. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and
- C. Such other and further relief as may be just and proper.

**TRIAL BY JURY DEMANDED ON ALL COUNTS**

Dated: January 30, 2023

Respectfully submitted,

By /s/ Jody B. Burton

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